UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM

Testimony by United States Commission on International Religious Freedom (USCIRF) Chair Michael Cromartie

Hearing on the U.S. Refugee and Asylum Programs

Before the House International Relations Committee of the United States House of Representatives Subcommittee on Africa, Global Human Rights, and International Operations

Wednesday, May 10, 2006

Mr. Chairman and distinguished Members of the Subcommittee, let me begin by thanking you for the opportunity to testify today at this important hearing.

As stated in the preamble of the International Religious Freedom Act of 1998 (IRFA):

> The right to freedom of religion undergirds the very origin and existence of the United States. Many of our Nation's founders fled religious persecution abroad, cherishing in their hearts and minds the ideal of religious freedom. They established in law, as a fundamental right and as a pillar of our Nation, the right to freedom of religion. From its birth to this day, the United States has prized this legacy of religious freedom and honored this heritage by standing for religious freedom and offering refuge to those suffering religious persecution.

Consistent with the language in the preamble of the legislation, Title VI of IRFA included a number of provisions related to asylum seekers, refugees, and immigrants; with particular attention to those individuals who have fled – or committed – severe violations of religious freedom. For several years, the Commission has monitored the implementation of this provision of IRFA. In the same Act, Congress authorized the Commission to undertake a major

study on the treatment of asylum seekers subject to Expedited Removal. That study was released in February 2005.

Unlike other refugee applicants who face persecution due to a more external characteristic such as race, nationality, group membership or political opinion, religion-based refugees fled persecution for carrying a much less visible characteristic: faith, belief, and/or a way of life.

The intangibles of religious faith make religion-based refugee claims the most difficult to prove for *bona fide* asylum seekers. Ironically, these same intangibles also make religion-based claims attractive for fraudulent applicants seeking to deceive inadequately trained refugee adjudicators.

The provisions of Title VI of IRFA address the challenge that well-trained adjudicators operating within a strong procedural framework are necessary to protect asylum seekers who are fleeing religious persecution, as well as the integrity of the asylum and refugee programs.

Title VI of IRFA does a great deal to promote fairness in this complex system adjudication. First and foremost, Congress requested that the State Department's Annual Report on International Religious Freedom – which is an excellent foreign policy tool - also serve as a key resource to asylum and refugee adjudicators.

IRFA-Mandated Training of Asylum and Refugee Adjudicators: Mixed Results

IRFA mandates training for many, but not all, refugee and asylum adjudicators. The results, so far, have been mixed.

The Asylum Corps at U.S. Citizenship and Immigration Services (USCIS) at the Department of Homeland Security (DHS) has developed an excellent training module on international religious freedom issues. The Immigration Courts and the USCIS Refugee Corps have also conducted regular trainings as required by IRFA.

The same cannot be said, however, about the Customs and Border Protection (CBP) officers who exercise Expedited Removal authority. These inspectors appear to be trained by only a short and generalized video presentation. But even this is more training than has been received by agents of the Border Patrol, who, despite IRFA requirements, receive no training on religious persecution.

The need for the religious freedom training mandated by IRFA was highlighted in the past year, when the Commission approached the Department of Justice (DOJ) with concerns about arguments advanced by the Department in the matter of *Li v. Gonzales*. In that case, Justice Department attorneys -- defending a decision of the Board of Immigration Appeals -- argued before the U.S. Court of Appeals for the Fifth Circuit that China had a "sovereign right" to criminalize unregistered religious activity. The Commission was concerned that this position undermined well-settled U.S. foreign policy to promote religious freedom in China. The Justice Department responded to the Commission's concerns and ultimately reversed its position.

Subsequently, the Commission was invited to lead trainings of attorneys at the Board and the Justice Department's Office of Immigration Litigation. While we welcome these efforts, the Commission continues to be concerned by positions taken by DOJ and DHS attorneys concerning religious freedom conditions; particularly in China and Iraq. Consequently the Commission has recommended that both the Board and the Office of Immigration Litigation should be subject to mandatory training under IRFA. Such training should also be required for Department of Homeland Security attorneys who argue asylum cases before the immigration courts.

IRFA Reforms to Improve Protection for Refugees Who Flee Religious Persecution Thwarted by Inter-Departmental Problems Implementing Recent Legislation

The Commission is also concerned that some who are fleeing religious persecution still do not have adequate access to the U.S. Refugee Program, despite several provisions in IRFA designed to facilitate that access.

Both the refugee program and the asylum program offer protection by allowing individuals with a well founded fear of persecution to secure legal immigration status in the United States. The asylum program, however, is for any applicant in the United States, and is subject to administrative and judicial review. For asylum seekers outside of the United States, only those who belong to a "processing priority" designated by the State Department are eligible to submit an application for the Refugee Program, and denied applications are not subject to any administrative or judicial review.

Section 602 of IRFA contains a number of provisions relating to training, reporting, as well as operating procedures to ensure that, even without administrative or judicial review, the overseas refugee program is accessible to those who flee religious persecution and treats them fairly.

To ensure that refugees who flee religious persecution receive due consideration, the Act requires that the Refugee Program include descriptions of religious persecution of refugee populations in its annual report to Congress. Pursuant to IRFA and the North Korea Human Rights Act, the State Department's Annual Report to Congress on the Refugee Program now contains more detailed information on religious persecution and refugees. Indeed, the Refugee Program has taken steps to facilitate access for members of some religious minority groups who have fled countries designated by the Secretary of State as countries of particular concern for religious freedom violations. These include Burmese Chin and Karen, as well as the Montagnards who have fled Vietnam. Efforts to find a durable solution for these groups, however, have been stalled by a longstanding policy impasse between the Departments of Justice, Homeland Security, and State.

Specifically, the statutory "bar" on admissibility to those who have provided "material support" to terrorists has inadvertently become a barrier for refugees and asylum seekers who have fled religious persecution at the hands of terrorists and repressive regimes[1]. Essentially, an alien is now held inadmissible if he or she provides any in-kind or monetary assistance ("material support") to any group which advocates, conspires to commit or commits an illegal act of violence – even if such support is provided under duress, or is directed toward a group supported by the United States.

Just prior to this hearing, the Administration reported that it has, after several years, authorized a waiver for the Burmese Karen in the Tam Hinh Camp in Thailand. The Administration emphasized, however, that the waiver was on "foreign policy grounds" and that the basic process for determining waivers has still not been developed by the three agencies.

The Departments of State, Homeland Security, and Justice should – without further delay – implement the statutorily authorized waiver process for the material support bar established by the USA Patriot Act, as amended by the REAL ID Act, to ensure that refugees and asylum seekers who have fled terrorism and repressive regimes are not barred from the refugee program because they were physically forced to assist a terrorist organization, or because they provided inconsequential support to organizations which oppose particularly oppressive regimes. The Commission also urges Congress to take action to ensure that the bar, as it should, prevents the admission of those who support terrorism, but not those who have fled it.

---

[1] *See* 8 U.S.C. 1182(a)(3)(B) (2006), *as amended by* Section 411 of the USA PATRIOT ACT OF 2001 (P.L. 107-56) *and* Section 103 of the REAL ID Act of 2005 (P.L. 109-13).

The material support bar, however, is not the only barrier that impedes access to the Refugee Program for those fleeing religious persecution. As the Commission found during its visit to China in August 2005 and in its recent study of conditions inside North Korea, North Koreans in China are routinely deported by Chinese authorities without any opportunity to pursue an asylum claim. Once returned to North Korea, these deportees face severe persecution for suspected contacts with foreign political and religious influences.

The United States Department of State – in a report issued under section 301 of the North Korea Human Rights Act – and the United Nations High Commissioner for Refugees (UNHCR) have made it clear that China's treatment of North Koreans constitutes a violation of its obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

The North Korea Human Rights Act included a number of provisions to facilitate access to the Refugee Program for asylum seekers who fled North Korea – another country of particular concern. Nevertheless, to date only six North Koreans have been admitted to the United States as refugees.

While the Chinese government would not likely provide the United States with the necessary cooperation to process North Korean refugees bound for the United States, North Koreans also live insecurely in other countries of first asylum – such as Russia and Thailand – where the United States has a refugee processing presence. Nevertheless, the UNHCR has been deterred from referring North Koreans to the United States for resettlement. This is because – in spite of the North Korea Human Rights Act – North Koreans remain one of only three nationalities who may not even be interviewed by the Department of Homeland Security until after completing a special security clearance process which, the Department has apparently been unable to implement. The inability of the United States to accept a single North Korean refugee, until now, has undermined its leadership to encourage other states to offer North Koreans protection. The Commission urges DHS to address this issue in order to facilitate greater access by North Korean refugees to the U.S. Refugee Program.

IRFA Reforms to Impose Operating Procedures for U.S. Refugee Program Remain Under-implemented

Section 602 of IRFA attempted to ensure that steps are taken to ensure that *bona fide* refugee applicants are not subject to an unfair disadvantage and denial of protection through no fault of their own; i.e. due to faulty case preparation or hostile biases by contractors and personnel who assist the

U.S. government with refugee case file preparation, completion of refugee applications, and language interpretation. However, this aspect of Section 602 remains largely unimplemented by the Department of State.

Section 602 requires that the Department of State develop guidelines to prevent "hostile biases" on the part of contractors and refugee program personnel - from victimizing refugee applicants. To date, no hostile bias guidelines have been drafted and implemented by the Department of State, which has done nothing more than insert a provision in their contracts indicating that contractors with the U.S. Refugee Program are responsible for preventing hostile biases in the course of case file preparation.

Section 602 also requires that the Department of State issue case file preparation procedures to ensure that inadequate case preparation –- through no fault of the applicant -- will not prejudice refugee claims. And while the Department of State has issued case file preparation procedures through its computer-based "worldwide refugee applicant processing system (WRAPS)," these procedures focus on bio-data and administrative information. They do not speak at all to ensuring the accuracy and integrity of the preparation of the refugee's persecution claim itself, which is the heart of the refuge adjudication.

IRFA Requirement for Consular Officer Training on Refugee Asylum Law Remains Unimplemented

Section 602 of IRFA also mandates training on the U.S. Refugee Program for consular officers. The Commission remains concerned, however, that training of State Department consular officers in the Refugee Program continues to fall far short of the requirements set forth in section 602(b) of IRFA.

While consular officers do not adjudicate refugee applications, they are authorized to refer individuals in need of protection to the U.S. Refugee Program.[2] Such referrals rarely take place. A recent report by Professor David Martin at the University of Virginia, commissioned by the State Department's Bureau of Population, Refugees and Migration, recommended that the Department of State provide new Foreign Service officers with more systematic instruction on refugee and humanitarian programs generally and

[2] This is an important function, as individuals fleeing persecution may not submit an application for refugee status unless they either (1) receive such a referral from an Embassy or the United Nations High Commissioner for Refugees or (2) fall into one of the narrowly defined processing priorities of "humanitarian concern" to the U.S. Refugee Program.

on the specific opportunities and procedures for referrals.[3] Further, the Commission's Expedited Removal Study expressed concern over evidence indicating that it may be increasingly difficult for refugees and asylum seekers to obtain protection from the United States, and called for a study on the extent to which consular officers are trained in the Refugee Program, as is required by IRFA, and the impact which such training is having on referrals made by U.S. embassies to the refugee program.

The Department of State has issued conflicting statements on the extent to which Consular Officers are trained in refugee law and policy. Consular training on the refugee program appears to be limited to a very narrow issue; that is, applications from immediate relatives of refugees. We would encourage the Committee to request that the State Department produce copies of all training materials relevant to the consular training of Section 602, as the Commission's repeated efforts to obtain these materials from the State Department have not been successful.

Inadmissibility of Severe Violators of Religious Freedom: Strengthened by Congress, Largely Ignored by the Departments of State and Homeland Security

IRFA also contains a significant – but largely ignored - immigration enforcement provision.

Section 604 of IRFA holds any alien inadmissible who, as a foreign government official, was "responsible for or directly carried out…particularly severe violations of religious freedom." On December 17, 2004, the President signed into law the Intelligence Reform and Terrorism Prevention Act of 2004, which strengthened this provision to provide a lifetime bar on admissions for such aliens. Prior to that time, the provision only applied for 24 months after the violation. The provision, however, has only been invoked once and never to exclude an official from any country designated by the Secretary of State as a country of particular concern. In March of 2005, it was used to exclude Governor Nahendra Modi of Gujarat state in India, in that he failed to step in to protect thousands of Moslems from deadly riots.

The Commission has not seen any evidence that the Departments of State and Homeland Security have developed a look-out list of aliens who are inadmissible on religious freedom grounds pursuant to Section 604.

---

[3] David A. Martin, *The United States Refugee Admissions Program: Reforms for a New Era of Refugee Resettlement* (July 2004), p. 72. (The report is available at http://www.state.gov/documents/organization/36495.pdf).

Directly related to identifying and barring severe religious freedom violators from entry to the United States, are the requirements under IRFA that the President identify specific officials responsible for violations of religious freedom and report the names of these individuals to the Congress and in the Federal Register. To date, however, no individual officials responsible for severe religious freedom violations have been identified from countries of particular concern, in spite of these requirements. The Commission urges the Departments of State and Homeland Security to implement these provisions to identify and exclude those officials found responsible for severe religious freedom violations.

Section 605 of IRFA: Expedited Removal Study Undertaken by the Commission, DHS Fails to Respond to Troubling Findings

Mr. Chairman, I would like to raise one further set of issues that relate to the Department of Homeland Security's general failure to respond to the findings and recommendations contained in the Commission's study on asylum seekers subject to Expedited Removal. The Commission is convinced that, if carried out, these recommendations would allow Expedited Removal to protect our borders while at the same time protecting *bona fide* asylum seekers.

Section 605 of IRFA authorized the Commission to undertake a study on the treatment of asylum seekers subject to Expedited Removal. The study identified serious implementing flaws which place legitimate asylum seekers at risk of being returned to countries where they may face persecution. The study also found that *bona fide* asylum seekers were almost certain to be detained inappropriately by DHS under jail-like conditions and in actual jails.

The study identified these serious flaws within both the Executive Office for Immigration Review at the Department of Justice and the Department of Homeland Security. On January 9, 2006, the Attorney General launched his own comprehensive review of the immigration court system. Commission staff and the study experts have met with the leadership of that review, and it is our hope and expectation that the USCIRF study will receive due consideration.

The Department of Homeland Security, however, has yet to respond to the Commission or, as requested by the DHS Appropriations Subcommittee, to the Congress, regarding most of the findings and recommendations of the study to address these concerns.

One year after the release of the report, the Department did, in response to a key Commission recommendation, appoint a refugee and asylum policy

coordinator – Igor Timofeyev. Also, late last month, the USCIS Asylum Corps issued guidance to address the Commission's findings relating to their role in credible fear determinations. The Commission looks forward to working with Mr, Timofeyev and other senior officials at DHS to address in a comprehensive way the findings and recommendations of the Commission's study.

Likewise, days prior to this hearing, the Asylum Corps within U.S. Citizenship and Immigration Services announced that it was amending its procedures for the Credible Fear determination process to address concerns identified by the USCIRF study.

The Commission remains concerned, however, that the Department of Homeland Security has expanded Expedited Removal, without addressing any of the substantive problems identified by the two enforcement agencies with roles in the Expedited Removal Process: Customs and Border Protection and Immigration and Customs Enforcement.

Indeed, the Commission is particularly concerned that DHS may be taking further steps with regard to Expedited Removal without taking into account the findings of the study.

The Office of the DHS Ombudsman recently proposed to shift certain Expedited Removal functions that are designed to protect *bona fide* asylum seekers from the USCIS Asylum Corps to personnel in the border protection and immigration enforcement agencies in DHS. This is despite the fact that USCIS was found by the USCIRF study to have far more effective quality assurance procedures than the other agencies. Moreover, the Ombudsman's extensive proposal neither mentions nor takes into account the Commission's study. The Commission urges that the findings of its study be taken into account by DHS in assessing the merits of the Ombudsman's proposal.

To conclude, Mr. Chairman, the United States has a proud tradition of offering refuge to those suffering religious persecution. Congress strengthened the U.S. Refugee Program when it enacted IRFA, and the Commission looks forward to continuing to work with you and the Subcommittee to ensure the full and fair implementation of IRFA's refugee and asylum provisions. Thank you again for the opportunity to testify, and I am happy to answer any questions.